INCOMING TELEGRAM

DEPARTMENT OF STATE—DIVISION OF COMMUNICATIONS AND RECORDS TELEGRAPH BRANCH

TRANSLATION

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FROM: Rome

TO : Secretary of State

NO : 4059, December 15

Commercial Treaty 25.

In Italian text article two paragraph one would read:

"The expression 'persone giuridiche od associazioni' (legal persons and associations) used in the present treaty shall s[illegible]ify those legal persons, those commercial and c[illegible] organizations, and those other entities and associations, with limited or unlimited liability, for the purpose of profit or not, which have been or may be created or organized in the future under the provisions of the applicable laws or regulations."

Phrase "societa commerciali e civili" (commercial and civil organizations) covers corporations, companies and partnerships including business organizations such as some partnerships which may be neither legal persons nor associations under Italian law.

Word "enti" (entities) is somewhat broader than legal persons and would include for instance unincorporated foundations (fondazioni disfatti) which apparently are not established under any "applicable" laws or regulations but are recognized in sense that they exist and are not contrary to laws and regulations in effect.

(Note that throughout treaty "applicable" is translated as "vigenti").

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-2- #4059, December 15, from Rome.

In preparing translation it was assumed that English definition of "corporations and associations" is intended to include all recognized forms of organization and Italian definition therefore framed to be all inclusive. Please inform whether this accords with Department's views.

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December 23, 1947.

SUMMARY MINUTES

Sixteenth Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation

Approved:

Participants:

For the United States: Messrs. Walmsley, Ainsworth and Summers.

For Italy: Mr. Lombardo, President; Messrs. Sorrentino, Pennetta, Iaschi, Ippolito, Timarco, De Rossi, Sensi, Di Cristina, Manna, Melano and Maresca.

Time: 10:30 A. M. Tuesday, December 23, 1947

Place: Palazzo Chigi.

Article V

Paragraph 2. With reference to the withdrawal of compensation under the "most favorable terms" applicable to the foreign currency involved, the American delegation reported that in the opinion of the Department of State it would be unwise to adopt any formula referring to the rate of exchange applicable to Government expenditures, inasmuch as the present agreement regarding U.S. Government expenditures in Italy has been devised to meet a temporary situation and because the agreement is not adapted to be applied over a long period of time and in unforeseeable circumstances. The American delegation therefore requested that the Italian negotiators give further consideration to the possible inclusion in the Additional Protocol of the following paragraph

> "Whenever a multiple exchange rate system is in effect, the rate of exchange which shall be applicable for the purposes of Article V, paragraph 2, shall be a rate not less favorable than the arithmetic mean of the rates applied to that fifty percent by value of all international financial transactions which was made at the most favorable rates during the calendar month preceding the month in which the property was taken."

The Italian delegation referred to the previous discussion at the last meeting concerning the adoption of a mathematical-type formula

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formula for this purpose, and reiterated its view that such a formula would lead to a fictitious rate of exchange which would yield a different value from the actual value of the property which was taken. The delegation stated that it could agree to a general formula along mathematical lines, such as "the average of the most favorable rates applicable to the same types of transactions", but that the only advantage in adopting a rule of this sort, which does not specify an exact mathematical formula, would be that it recognizes the principle that the exchange rate selected for this purpose should bear some relation to the "most favorable rates."

The American delegation then suggested that the following paragraph, as an alternative, might be acceptable to the Italian negotiators to be included in the Additional Protocol:

> "Whenever a multiple exchange rate system is in effect in Italy, the rate of exchange which shall be applicable to the purposes of Article V, paragraph 2, need not be the most favorable of all rates applicable to international financial transactions of whatever nature; provided, however, that the rate applicable will in any event permit the recipient of compensation actually to realize full economic value thereof in United States dollars. In case dispute arises as to the rate applicable, the rate shall be determined by agreement between the High Contracting Parties."

After due consideration, the Italian delegation stated that this proposed paragraph was acceptable.

Article VII

Paragraph 2. The American delegation suggested, and the Italian negotiators approved, the deletion of the entire last sentence of this paragraph, beginning with the words, "Moreover, such devisee or heir ..". The American delegation proposed this deletion in order to remove the question of the withdrawal of proceeds on the "most favorable terms" applicable to the foreign currency involved, but stated that such action was taken without prejudice to the position of the United States Government in this matter in the event that there should be a change in the existing Italian legislation concerning the right of aliens to inherit property.

Article XXI

The American delegation referred to the discussion at the last meeting (Minutes of December 12) concerning the preferential shipping provisions of the Italo-Argentine Commercial Agreement and their relationship to the most-favored-nation clauses of this Article. In view of the apparent conflict between Article 32 of the Argentine Agreement and Article XXI, paragraph 1, of the Treaty, which had been accepted by the Italian negotiators, the American delegation stated that it wished to record in the Minutes the opinion of the Department of State, based on its understanding that, inasmuch as the Agreement specified only that tonnage should "preferably" be divided equally between the two countries and that it need not be divided at all if any higher cost or delay in shipment were to result, the Italian Government does not consider itself obligated

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necessarily to apply Article 32 of the Agreement in such a way as to contravene the provisions of Article XXI of the Treaty. The Department of State nevertheless expressed confidence, it was said, that the Italian Government would not assume similar commitments in future agreements.

Article XXII

Paragraph 2. The American delegation stated that inasmuch as the provisions with respect to coastal trading contained in this paragraph refer not merely to the provisions in paragraph 1 but to other navigation provisions as well, it would appear advisable to revise the wording of this paragraph entirely. Among other things, it was suggested that the local laws clause ("and shall be subject to the local laws and regulations thereto") could properly be omitted, inasmuch as there would be no need for such a phrase if the paragraph is amended to provide an exception for coastal trading insofar as both national treatment and most-favored-nation treatment are concerned. The proposal of the American delegation would read as follows:

"The coasting trade and inland navigation of each High Contracting Party are excepted from the requirements of national and most-favored-nation treatment".

The Italian delegation stated that the revised paragraph was acceptable.

Article XXIV

Paragraph 1 (b). The American delegation stated that the revised version of this sub-paragraph suggested by the Italian negotiators was acceptable (see Minutes of December 12), with the minor modification that the phrase "or as antiquities" should be enclosed in commas in order to clarify that the words "of national interest" refer to both works of art and to antiquities.

Additional Protocol

Paragraph 3. The Italian delegation stated that it had examined and approved the American proposal (Minutes of November 19) for the insertion of a new paragraph 3, and the renumbering of paragraph 4, in the Additional Protocol, in order to permit certain transitional period controls over the internal sale, distribution or use of imported articles in short supply, other than or different from the controls applied to like articles of national origin. This is an exception to the rule proposed in Article XVI, paragraph 1.

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Exchange of Notes

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Exchange of Notes on Cultural Relations

The Italian delegation submitted a proposed new and revised text of an exchange of notes on cultural relations. In this connection, in response to an inquiry, the American delegation stated that the word "professional" as used in the proposed document (referring to the exchange of professional personnel) has a meaning in academic circles in the United States which includes doctors, lawyers, architects, engineers, journalists, dentists, pharmacists and agricultural experts, among others, who are graduates of professional schools attached to or independent of universities and colleges and who are members of the faculty of a university or college.

Exchange of Notes on Copyright Matters

The American and Italian delegations agreed that the proposed exchange of notes on copyright matters need not be considered further in direct connection with the signature of the Treaty of Friendship, Commerce and Navigation, but would be pursued separately as a matter related to the agreements signed in Washington by Mr. Lombardo on August 14, 1947.

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